with fastening means (buckle 41 and mating segments 43, 45). However, the buckle 41 and the mating segments 43, 45 are adapted to be connected to each other for tensioning the seating surface. They are not adapted to be connected to the spaced rods.

In contrast thereto, according to claim 1, all band elements comprise fastening elements and all fastening elements are adapted to be connected with corresponding side elements of a four sided frame. As a result, the plug connections between all of the side elements of the frame are secured by the forces generated within the plane of the bearing surface when a weight bears on the bearing surface. Consequently, the swing according to the invention comprises a self-stabilizing structure with respect to all of the four side elements when in use which renders a self-securing by means of the cord segments being connected to a single bearing point unnecessary. Thus, the cord elements for carrying the swing can be connected to arbitrarily selected positions, for example, in such a manner that a twist of the swing around the axis of gravity can be prevented.

By contrast, the bearing surface of the swing disclosed in Allen provides a self-securing function, but only in the direction of the shorter side elements. Hence, the cord segments sustaining the swing need to be connected to a single bearing point so as to provide a self-securing function the all four side elements of the frame.

Also, the inter-woven band elements disclosed in Adams do not at all provide a self-securing function to the frame of the wheelchair. By contrast, all forces resulting from the bearing surface being loaded need to be received by further structural elements of the frame. Apart from that, Adams does not show a rectangular frame constituted by four side elements and accordingly, Adams does not teach how to provide a self-securing

function to such a four sided frame in which side elements are plugged together by connecting elements.

Accordingly, the references teach inherently incompatible structures, and if the proposed combination of the seating surface shown in Adams with a four sided frame of a cradle as shown in Allen could be made, the result would not be a swing having the structure and effect according to the invention.

Moreover, the combination of these references is inappropriate because there is no teaching, motivation or suggestion in either reference to select and combine the references as the examiner proposes. See In re Lee, 61 USPQ 2d 1430, 1433 (Fed. Cir. 2002) wherein the Court stated:

> "The factual inquiry whether to combine references must be thorough and searching." *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120m 1125-25m 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.,* 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed Cir. 1998)); In re *Dembiczak,* 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a highlight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references"); In re *Dance,* 160 F.3d 1339, 1343, 48 USPQ 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); In re *Fine,* 837 F.2d 1071, 1075 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) ("teachings of references can be combined only if there is some suggestion or incentive to do so'") (emphasis in original) (quoting *ACS Hosp. Sys. Inc. v. Montefiore Hosp.,* 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)).

The need for specificity pervades this authority. See, e.g., In re *Kotzab,* 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); In re *Rouffet,* 149 F.3d 1350, 1359, 47 USPQ2d 1453m 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); In re *Fritch,* 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Respectfully submitted,

Robert L. Epstein, Esq., Reg. No. 26451
EPSTEIN DRANGEL
BAZERMAN & JAMES, LLP
Attorneys for Applicant
60 East 42nd Street, Suite 820
New York, New York 10165
Tel. No.: (212) 292-5390
Fax. No.: (212) 292-5391